IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3175 OF 1997

Marathi Mission & Ors..... .....
Petitioners
V/s
State of Maharashtra & Ors..... .....
Respondents.

Mr.D.R.Singh h/f Mr.V.Y.Sanglikar, Adv. for the petitioners.

Mr.S.K.Chincholikar, AGP for respondent Nos. 1 to 3.

None for respondent No.4.

CORAM: A.P. DESHPANDE, J.
14.6.2007

PC:

Management of minority school has instituted this petition taking exception to the judgment and order passed by the Presiding Officer, School Tribunal Kolhapur. Petitioner No.1 is admittedly a minority institution within the meaning of Article 30 of the Constitution of India and entitled to the benefits flowing from the said status. Amongst other schools petitioner No.1 was administering a primary school by name Union School at Satara. The present petitioner No.3 was at the relevant point of time serving as an Assistant Teacher in an unaided school administered by the petitioner No.1. On occurring of vacancy in the post of Head in the primary school petitioner No.1 appointed petitioner No.3 as Head Mistress/Principal of the Union School. Respondent No.4 objecting to the said appointment of petitioner No.3 as Head Mistress filed an appeal before the School Tribunal contending that the

claim of respondent No.4 herein was superseded by appointment of petitioner No.3 as Head of the school. The School Tribunal reached a conclusion that as petitioner No.3 was working in unaided school she could not have been transferred to the Union school and even if transferred would be junior to respondent No.4. Proceeding on these lines the appeal has been allowed by a judgment dated 18.12.1996. The learned Additional Government Pleader has filed an affidavit in reply. Learned Additional Government Pleader submit that respondent No.4 has retired on 1.7.1995 i.e. before the Tribunal delivered the judgment. In the affidavit in reply it is categorically admitted by the Government and the Deputy Director that the school in question administered by the petitioner is minority educational institution. If this be so, then while recruiting a person as Head of such school the criteria of seniority would not apply. Section 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 reads thus:

> "3(1) The provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.
>
> (2) Notwithstanding anything contained in sub-section (1) the provisions of this Act shall not apply to the recruitment of the Head of a minority school and any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to the Director or, as the case may be, the Deputy Director for this purpose."

Sub-section (2) makes it amply clear that the provisions of the act and the

Rules which caste an obligation on the management to promote senior most teacher would have no application to such an appointment. The respondent Nos. 1 and 2 are supporting the case of the petitioner and approval has also been granted to the appointment of the petitioner No.3 as Head Mistress. Respondent No.4 has never worked as Head Master as she had retired during pendency of the appeal before the Tribunal and all throughout the petitioner No.3 has worked as such and received the salary. In view of the fact that the school in question is minority educational institution it is the choice of the management of such an institution to recruit a person as Head. The right of minority educational institution under Article 30 of the Constitution of India is expressly recognised by sub-section (2) of section 3 of the Act. For the reasons stated above the writ petition deserves to be allowed and I proceed allow the same. The impugned order passed by the School Tribunal is quashed and set aside. Rule is made absolute.

14.6.07